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FACULTY OF LAW

**SECURED TRANSACTIONS**  
**WINTER TERM 2017-2018**

**Supplementary Materials**

**Professor Anthony Duggan**

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# Table of Contents

## **Part 1: Course Outline and Reading Guide**

## **Part 2: Statutory Materials**

### ***Federal***

Bank Act (excerpts)

Bankruptcy and Insolvency Act (excerpts)

### ***Provincial***

Personal Property Security Act

Cutting Unnecessary Red Tape Act 2017 (excerpts)

Personal Property Security Act – General Regulation

Personal Property Security Act – Minister's Order

Personal Property Security Act – Forms

Securities Transfer Act (excerpts)

Repair and Storage Liens Act

## **Part 3: Problems for Class Discussion**

Basic priority rules

Purchase- money security interest priority rules

Fixtures

Proceeds

Conflict of laws

Bank Act security interest priorities



# SECURED TRANSACTIONS 2018: COURSE OUTLINE AND READING GUIDE

## LEGEND

CB:	Duggan and Ziegel, <i>Secured Transactions in Personal Property</i> (7 <sup>th</sup> ed.) (Emond Montgomery, Toronto, 2017)
OPPSA:	<i>Personal Property Security Act</i> , R.S.O. 1990, c. P.10
Supp.	<i>Supplementary Materials for 2017-2018 Academic Year</i>

## TOPIC 1: INTRODUCTION

CB, Chapter 1

### 1. The function of credit; unsecured and secured credit distinguished

### 2. Pre-PPSA forms of transaction

- mortgage
- pledge
- lien (charge)
- conditional sale
- lease

### 3. Issues in secured transactions law

- formal requirements
- registration
- rights of parties between themselves
- third party rights
- default and enforcement

#### **4. The OPPSA and other laws**

**(a) Origins of the OPPSA (UCC, Article 9)**

**(b) The Western model PPSA**

**(c) Bank Act, s. 427 (see further, Topic 12)**

#### **5. Personal property and its classifications**

OPPSA, s. 1(1) (definitions below)

**(a) “Personal Property”**

**(b) “Goods”**

(i) “consumer goods”

(ii) “inventory”

(iii) “equipment”

**(c) Non-goods tangible personal property**

(i) “chattel paper”

(ii) “documents of title”

(iii) “instruments”

(iv) “money”

(v) “investment property”

**(d) “Intangibles”**

(i) “accounts”

(ii) other types of intangibles (choses in action, IP rights, etc.)

#### **6. Proceeds collateral**

OPPSA, ss 1(1), 25(1)



**7. Security interests in circulating assets**

**(a) The US position (pre-Article 9)**

**(b) The English position**

**(c) The Article 9 and Canadian PPSA position**

**8. Security interests and bankruptcy**

**9. The secured lending puzzle**

- Armour, “The Law and Economics Debate About Secured Lending: Lessons For European Lawmaking?”, CB 24

## **TOPIC 2: THE SCOPE OF THE OPPSA**

### **1. Security transactions**

OPPSA, s. 2

#### **(a) Transaction**

OPPSA, s. 1(1) “security agreement”, “security interest”

- *Ellingsen (Trustee of) v. Hallmark Ford Sales Ltd.*, CB 99

#### **(b) Security interest in “personal property”**

OPPSA s.1(1) “personal property”

- *Royal Bank of Canada v. Saulnier* , CB 59

#### **(c) In substance security transactions**

OPPSA, s. 2(a)(i)

- *356447 British Columbia Ltd. v. CIBC*, CB 112
- *Caisse Populaire Desjardins de l’Est de Drummond v. Canada*, CB 42

#### **(d) Security and non-security leases**

OPPSA, ss. 2(a)(ii), (c) and 1(1), “lease for a term of more than one year”.

- CB 74-77

#### **(e) Consignments**

OPPSA, s.2(a)

- CB 77

## **(f) Assignments**

OPPSA, ss. 2(a)(ii), 2(b), 40

- CB 74
  - (i) Absolute assignments and security assignments
  - (ii) Assignments with and without recourse
  - (iii) Notification and non-notification assignments
- *Fairbanx Corp. v. Royal Bank of Canada*, CB 245.

## **2. Exclusions from the scope of the Act**

OPPSA, s. 4(1)

- *Commercial Credit Corp Ltd. v Harry Shields Ltd*, CB 78

### **TOPIC 3: VALIDITY AND ENFORCEABILITY, ATTACHMENT AND PERFECTION**

#### **1. Validity of security agreement**

##### **(a) Effectiveness of agreement**

OPPSA ss.9(1), 73

- *Ellingsen (Trustee of) v. Hallmark Ford Sales*, CB 99
- *MacEwen Agriculture Centre Inc. v. Beriault*, CB 129

##### **(b) Writing requirements (see further Section 2 (Attachment), below)**

OPPSA ss 11(2)(a).

- *Atlas Industries v Federal Business Development Bank*, CB 136

##### **(c) Copy of security agreement**

OPPSA, s.10

#### **2. Attachment**

OPPSA s.11

##### **(a) What attachment means**

##### **(b) The requirements for attachment**

(i) Agreement

(ii) Value

(iii) Debtor has rights in collateral

- *994814 Ontario Inc. v. RSL Canada Inc.*, CB 108
- *iTrade Finance Limited v. Bank of Montreal*, CB 140

(iv) Exception – “unless the parties have agreed to postpone”

##### **(c) After-acquired property**

OPPSA, s.12

**(d) The floating charge**

CB Commentary 153-155

- *Credit Suisse Canada v 1133 Yonge Street Holdings*, CB 155 (trial judgment)

**(e) The “all PAAP” security interest and the licence to carry on business**

CB 467-468

- *Credit Suisse Canada v 1133 Yonge Street Holdings*, CB 164 (appeal judgment)
- *Royal Bank of Canada v Sparrow Electric Corp.*, CB 169

**3. Rights of parties to security agreement**

OPPSA, ss 13-18

**4. Perfection**

**(a) Introduction**

OPPSA, ss 19, 20, 22, 23

**(b) Perfection by possession**

OPPSA, s22

- *Re Raymond Darzinskas*, CB 185
- *Sperry Inc v CIBC*, CB 187

**(c) Perfection by registration**

OPPSA, s.23

**(d) Perfection by control**

OPPSA, s.22.1

- Cameron, “Secured Transactions Under Ontario’s Securities Transfer Act 2006), CB 194

**(e) Temporary perfection**

OPPSA, s.24

**(f) Continuity of perfection**

OPPSA, s.21

**(g) Consequences of non-perfection**

OPPSA s.20

CB 219-225

(i) Competing secured parties

(ii) Execution creditors

(iii) Debtor's trustee in bankruptcy

- *Re Giffen*, CB 204

(iv) Transferees for value

- CB 2268229